



**BOARD OF ADJUSTMENT
AGENDA**

**Kannapolis City Hall
Laureate Center - Kannapolis, N.C.**

Tuesday, April 2, 2024, at 6:00 PM

- 1. Call to Order**
- 2. Roll Call and Recognition of Quorum**
- 3. Approval of Agenda**
- 4. Approval of Minutes – March 5, 2024**
- 5. Swearing In for Testimony**
- 6. Public Hearing:**
 - a. BOA-2024-06 – Special Use Permit – 3148 Barr Rd.**

Public Hearing to consider a request for a Special Use Permit (SUP) to allow for a residential care facility on property located at 3148 Barr Rd. Pursuant to Table 4.2.B(5) of the Kannapolis Development Ordinance, a SUP is required for residential care facility in the Residential 1 (R1) zoning district. The subject property is 1.41 +/- acres and is more specifically identified as Cabarrus County Parcel Identification Number 46927680540000.
- 7. Planning Director Updates**
- 8. Other Business**
- 9. Adjourn**



**Board of Adjustment
April 2, 2024 Meeting**

Staff Report

TO: Board of Adjustment
FROM: Richard Smith, Planning Director
SUBJECT: Case# BOA-2024-06: Special Use Permit – 3148 Barr Rd.
Applicant: Southeastern Recovery Center LLC

Request for a Special Use Permit to allow for a Residential Care Facility on property located at 3148 Barr Rd.

A. Actions Requested by Board of Adjustment

1. Motion to accept the City’s exhibits into the record.
2. Motion to approve/revise Findings of Fact for the Special Use Permit.
3. Motion to approve (approve with conditions) (deny) the issuance of the Special Use Permit
4. Motion to Issue Order of Approval.

B. Required Votes to Pass Requested Action

A majority vote is required to approve, approve with conditions, or deny the requested actions.

C. Background

The applicant, Southeastern Recovery Center LLC., is requesting a Special Use Permit (SUP) to allow for a “Recovery Residence” in the Residential 1 (R-1) zoning district on approximately 1.41 +/- acres of property located at 3148 Barr Rd. and further identified as Cabarrus County Parcel Identification Number 46927680540000.

Pursuant to Table 4.2.B(5) of the Kannapolis Development Ordinance (KDO), issuance of a SUP is required for a Residential Care Facility use in the Residential 1 (R1) zoning district. **The applicant began operation of the facility before inquiring about or obtaining any permits.** Staff became aware of the use after phone calls from neighbors. Per KDO requirements a pre-application meeting is required for a Special Use Permit. **As indicated on the application, no such meeting was held.**

On the Special Use Permit application, the applicant specified that the proposed use will be a “Recovery Residence.” A **“Recovery Residence” is not a use that is defined in the KDO.** Based upon the

applicant's submitted description of the facility and its expected number of residents, sixteen (16), the use would be considered a "Residential care facility" under the KDO as defined below:

Residential care facility

A staffed premises (not a single-family dwelling) with paid or volunteer staff that provides full-time care to more than 6 individuals. Residential care facilities include dependent and/or independent living facilities, group homes (N.C.G.S. 131D), residential child-care facilities (N.C.G.S. 131D-10.2), assisted living residences (N.C.G.S. 131D-2), adult care homes (N.C.G.S. 131D2), retirement housing, congregate living services, assisted living services, continuing care retirement centers, skilled nursing services, and orphanages. This term excludes family care homes and nursing homes.

A Residential Care Facility, however, is not permitted in a single-family dwelling.

D. Fiscal Considerations

None

E. Policy Issues

Section 2.5.A(5) of the KDO requires that the Board of Adjustment shall only approve a special use permit if the applicant demonstrates that the criteria below have been met. Staff analysis of each criterion is noted.

Staff Findings of Fact - Based on application review:

Yes No

The proposed special use will be in harmony with the area in which it is to be located and in general conformance with the City's Land Use Plan.

Uses on the surrounding properties consist of single-family residential. The *Move Kannapolis Forward 2030 Comprehensive Plan* designates the subject property and surrounding properties as "Conservation Neighborhood" and "Neighborhood Transition 1" Character Areas.

A Residential care facility is not inherently listed as a primary or secondary use in the "Conservation Neighborhood" or "Neighborhood Transition 1" Character Areas. The intent of the Neighborhood Transition 1 area is to maintain the character of existing neighborhoods. Staff has determined that based on the application submitted, the use is not consistent nor in harmony with existing and surrounding uses because of its intensity.

Adequate measures shall be taken to provide ingress and egress so designed as to minimize traffic hazards and to minimize traffic congestion on the public roads.

The proposed project is not anticipated to cause any traffic hazards or traffic congestion.

The proposed use shall not be noxious or offensive by reason of vibration, noise, odor, dust, smoke or gas.

It is not anticipated that the use of a Residential care facility at this location would create vibration, noise, odor, dust, smoke, or gas that would be noxious or offensive to the surrounding area.

The establishment of the proposed use shall not impede the orderly development and improvement of surrounding property for uses permitted within the zoning district.

The use of a Residential care facility as proposed in the application for this site would impede orderly development or improvement of surrounding property. The majority of the properties in this area are developed with single-family residential homes.

The establishment, maintenance, or operation of the proposed use shall not be detrimental to or endanger the public health, safety, or general welfare.

There is no apparent danger or detrimental impact to the overall public safety, health and welfare resulting from the proposed use. The proposed use is subject to all the requirements of the Kannapolis Development Ordinance.

The proposed use complies with all applicable provisions of the KDO.

The proposed use does not comply with all provisions of the KDO. Per KDO definition a *Residential care facility* is not a single-family dwelling.

Residential care facility (KDO definition)

A staffed premises (not a single-family dwelling) with paid or volunteer staff that provides full-time care to more than 6 individuals. Residential care facilities include dependent and/or independent living facilities, group homes (N.C.G.S. 131D), residential child-care facilities (N.C.G.S. 131D-10.2), assisted living residences (N.C.G.S. 131D-2), adult care homes (N.C.G.S. 131D2), retirement housing, congregate living services, assisted living services, continuing care retirement centers, skilled nursing services, and orphanages. This term excludes family care homes and nursing homes.

The applicant consents in writing to all conditions of approval included in the approved special use permit.

N/A unless the Board of Adjustment determines to add conditions.

F. Legal Issues

Board's Findings of Fact - Based on application review and public hearing.

In order to determine whether a special use permit is warranted, the Board must decide that each of the six findings as outlined below has been met and that the additional approval criteria has been satisfactorily addressed. If the Board concurs completely with the findings of the staff, no additional findings of fact are necessary, and the staff findings should be approved as part of the decision. However, if the Board wishes to approve different findings (perhaps as a result of additional evidence or testimony presented at the public hearing), alternate findings need to be included as part of the six criteria below. Should a special use permit be approved, the Board may place conditions on the use as part of the approval to assure that adequate mitigation measures are associated with the use.

- | Yes | No | |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | The proposed conditional use will be in harmony with the area in which it is to be located and in general conformance with the City's Land Use Plan. |
| <hr/> | | |
| <input type="checkbox"/> | <input type="checkbox"/> | Adequate measures shall be taken to provide ingress and egress so designed as to minimize traffic hazards and to minimize traffic congestion on the public roads. |
| <hr/> | | |
| <input type="checkbox"/> | <input type="checkbox"/> | The proposed use shall not be noxious or offensive by reason of vibration, noise, odor, dust, smoke or gas. |
| <hr/> | | |
| <input type="checkbox"/> | <input type="checkbox"/> | The establishment of the proposed use shall not impede the orderly development and improvement of surrounding property for uses permitted within the zoning district. |
| <hr/> | | |
| <input type="checkbox"/> | <input type="checkbox"/> | The establishment, maintenance, or operation of the proposed use shall not be detrimental to or endanger the public health, safety, or general welfare. |
| <hr/> | | |
| <input type="checkbox"/> | <input type="checkbox"/> | The proposed use complies with all applicable provisions of the KDO. |
| <hr/> | | |
| <input type="checkbox"/> | <input type="checkbox"/> | The applicant consents in writing to all conditions of approval included in the approved special use permit. |
| <hr/> | | |

G. Recommendation

Based on the above findings, staff recommends **denial** of the Special Use Permit based on the staff Findings of Fact (or as modified by the Board), the conceptual site plan, and the proposed use not complying with all local, State, and Federal requirements. A Residential Care Facility is not permitted in a single-family dwelling as proposed in this application.

The Board of Adjustment should consider all facts and testimony after conducting the Public Hearing and render a decision accordingly to approve, approve with conditions, or deny the Special Use Permit.

H. Attachments

1. Special Use Permit Application
2. Vicinity Map
3. Zoning Map
4. Future Land Use Map
5. Conceptual Site Plan
6. Elevation Rendering
7. List of Notified Properties

- 8. Notice to Adjacent Property Owners
- 9. Posted Public Notice

I. Issue Reviewed By:

Planning Director	X
City Attorney	X
Assistant City Manager	X



Special Use Permit

So that we may efficiently review your project in a timely manner, it is important that all required documents and fees listed on this form below are submitted with your application.

SPECIAL USE PERMIT REQUEST

Special Use Permit (SUP) – Request for SUP as required by Table 4.3.B(3) of the Kannapolis Development Ordinance (KDO).
Approval authority – Board of Adjustment.

Property Address: 3148 Barr Rd. Concord, Nc 28027

Applicant: Southeastern Recovery Center LLC / H2-1 LLC

SUBMITTAL CHECKLIST

- Pre-Application Meeting – send an email to planreviewappointment@kannapolisnc.gov
- SUP Checklist and Application – Complete with all required signatures
- Plot/Site Plan showing the proposed use
- Fee: \$625.00 (\$600 Application Fee + notification fee [see Fee Schedule])

PROCESS INFORMATION

Public Notification: This is a quasi-judicial process that requires a public hearing and public notification including first-class mailed notice to adjacent property owners and a sign posted prominently on the property (Table 2.4.F(2) of the KDO).

Review Process: All applications will be reviewed for compliance and then forwarded to the Board of Adjustment for consideration at a public hearing which is held monthly on the 1st Tuesday at 6:00pm in City Hall Laureate Center. The application and all fees must be paid prior to scheduling the public hearing. Please review Section 2.4.D of the KDO.

Action by Board of Adjustment: After conducting a public hearing, the Board of Adjustment may: approve; approve with conditions; deny; or conduct an additional public hearing on the application. Per Section 2.5.A(5)c, the Board may approve a petition only if compliance with all standards is obtained.

Scope of Approval: Per Section 2.5.A(5)a.2 of the KDO, approval of a SUP does not authorize any development activity, but shall authorize the applicant to apply for final site plan approval. Zoning clearance permits will not be issued until the SUP and final site plan have been approved.

By signing below, I acknowledge that I have reviewed the Submittal Checklist and have included the required submittal items and reviewed them for completeness and accuracy. I also acknowledge that my application will be rejected if incomplete.

Applicant's Signature: _____

Date: _____

2/20/24



SPECIAL USE PERMIT APPLICATION

Approval authority – Board of Adjustment

Applicant Contact Information

Name: Greg Heafner

Address: 1510 Twisted Oak Drive Chapel Hill, NC 27516

Phone: (919) 967-3800

Email: Gsheafner@bellsouth.net

Property Owner Contact Information same as applicant

Name: H2-1 LLC Jamie Hoffman

Address: 3148 Barr Rd, Concord NC 28027

Phone: (404) 771-9863

Email: Jamie@serecoverycenter.com

Project Information

Project Address: 3148 Barr Rd. Concord, NC 28027 Zoning District R1

Parcel PIN: 4692-76-8054-0000 Size of property (in acres): 1.41

Current Property Use: Recovery Residence

Proposed Use: Recovery Residence

The location of the above-mentioned proposed use is indicated on the accompanying site plan, and the nature of the proposed use is more fully described as follows (attach separate sheet if necessary):

See Attached

REVIEW STANDARDS

The Board of Adjustment does not have unlimited discretion in deciding whether to approve a Special Use Permit (SUP). Per Section 2.5.A(5)c of the Kannapolis Development Ordinance (KDO,) the applicant must demonstrate successful compliance with all standards to obtain a SUP. In the space provided below, indicate the **facts** that you intend to provide to convince the Board that it can properly reach the following conclusions:

- The proposed special use will be in harmony with the area in which it is to be located and in general conformance with the City's Comprehensive Plan.**

See Attached

2. Adequate measures shall be taken to provide ingress and egress to minimize traffic hazards and traffic congestion on the public roads.

See Attached

3. The proposed use shall not be noxious or offensive by reason of vibration, noise, odor, dust, smoke or gas.

See Attached

4. The establishment of the proposed use shall not impede the orderly development and improvement of surrounding property for uses permitted within the zoning district.

See Attached

5. The establishment, maintenance, or operation of the proposed use will not be detrimental to or endanger the public health, safety, or general welfare.

See Attached


6. The proposed use complies with all applicable provisions of the KDO.

See Attached

7. The applicant consents in writing to all conditions of approval included in the approved special use permit.

See Attached

By signing below, I certify that all of the information presented in this application is accurate to the best of my knowledge, information and belief. I acknowledge that the Board of Adjustment may add conditions on the requested use as part of the approval to assure that adequate mitigation measures are associated with the use. For example, landscaping or fencing may be required, or a shift of operations away from adjoining properties may be stipulated.

Applicant Signature  Date 2/20/24

Property Owner Signature  Date 2/20/24

ATTACHMENT

INTRODUCTION

Southeastern Recovery Homes, LLC (“Southeastern”) operates a residence for persons in recovery from alcoholism or drug addiction at 3148 Barr Road, Concord, NC 28027.

The City of Kannapolis classifies Southeastern’s use of the property as a Residential Care Facility under Kannapolis’ Development Ordinance (“KDO”) which requires a special use permit.

Southeastern disputes the City’s classification as a Residential Care Facility. The reason for this is that Southeastern services persons with disabilities. The City’s definition of Residential Care Facility does not expressly include disabled persons. In fact, the definition expressly excludes certain homes, such as Family Care Homes, that do expressly serve persons with disabilities.

On December 13, 2023 Southeastern requested a reasonable accommodation pursuant to the Federal Fair Housing, Act 42 U.S.C. 3600 et. seq. to be exempt from the Residential Care Facility classification and be treated as the functional equivalent of a family without limitation of the number of unrelated persons who

can reside together as a family. (A copy of the December 13, 2023 letter making this request is attached hereto and incorporated herein by reference).

The City responded on January 17, 2024 (a copy of which response is also attached and incorporated herein by reference). The response stated that only the Board of Adjustment can grant such a reasonable accommodation, and that Southeastern must go through the Special Use Permit application process. Therefore, Southeastern submits this application for a Special Use Permit to exhaust its administrative remedies in seeking its requested accommodation and apply for a Special Use Permit.

DESCRIPTION OF SOUTHEASTERN USE

The property at 3148 Barr Road is a 3000 square foot, six bedroom, three bath, two-story, single-family detached house. It has a driveway and extension providing parking for four vehicles. It sits on an approximately one and a half acres with a large backyard.

The house is home to men in recovery from alcoholism and/or drug addiction. The house is intended for up to sixteen (16) residents.¹ The home is a safe and supportive place for these men in early recovery to live in a sober

¹ The number of residents in this particular home complies with North Carolina Association of Recovery Residences.

environment. The home is staffed by two live-in supervisors to assure the safe and sober environment. No treatment is provided in the home. The men receive treatment for their recovery at another location operated by Southeastern in Concord. This location is licensed as a partial hospital program and intensive outpatient treatment center by the North Carolina Department of Health and Human Services. Residents are at this clinic in Concord for treatment from 9:00 a.m. to 5:00 p.m., Monday through Friday.

The house at 3148 Barr Road is home to men. They return home after 5:00 p.m. after their treatment. They cook together and eat together, do their laundry, sleep, fellowship, and live together in a sober supportive environment. No visitors are allowed, this includes overnight guests.

The residents are not allowed to have vehicles on site. The only vehicles on site are the two supervisors' personal cars, and Southeastern's van for transporting the residents. All transportation is provided by the supervisors in the van. This includes daily transportation to Southeastern's off-site treatment facility referenced above, to Alcoholic Anonymous meetings, to the gym, and to weekend outings.

To live in the house, all residents must first pass a prescreening process. No sexual or violent crime offenders are allowed. Before living in the house all residents are detoxed and drug and alcohol free. While living in the house they are

drug tested several times a week. There is a zero tolerance for alcohol or drug use inside or outside the home. Any use or positive test results in immediate expulsion from the home.

The average length of stay in the home for a resident is 30 to 45 days. The residents range in age from 18 to 60. The home has operated since November 19, 2023 without incident.

REQUEST FOR REASONABLE ACCOMMODATION

Southeastern's residents are a protected class under the Fair Housing Act (FHA), 42 U.S.C. § 3600 et. seq. Recovering alcoholics and addicts are specifically included within the definition of "handicapped individual" under the FHA. *City of Edmonds, WA v. Oxford House, Inc.* 514 U.S. 725 (1995). The FHA's prohibits discrimination against persons within a protected class. This prohibition includes discriminatory zoning decisions by local governments. The FHA defines discrimination to include a "refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such handicapped person equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(f)(3)(B).

Federal law requires a reasonable accommodation when the request is both reasonable and necessary. The law defines reasonable and necessary as follows:

“Reasonable”. An accommodation is reasonable if it would not undermine the legitimate purposes of or fundamentally alter existing zoning regulations, and if it would not impose a significant financial and administrative burden upon the municipality.

“Necessary”. An accommodation is necessary if it would provide direct or meaningful therapeutic amelioration of the effects of the particular disability or handicap, and would afford handicapped or disabled persons equal opportunity to enjoy and use housing of their choice in residential districts of the municipality.

The reasonableness and necessity of Southeastern’s requested accommodation is as follows:

REASONABLE:

Southeastern’s use does not undermine the purposes of the KDO, nor does it impose any financial or administrative burden on the City. In fact, the Southeastern house provides a free benefit to the City by providing housing to men recovering from alcoholism and drug addiction.

The Southeastern house does not fundamentally alter the City's zoning scheme. As set forth above, Southeastern disputes that it falls under the KDO's definition of a Residential Care Facility.

The KDO definition of Residential Care Facility is: "A staffed premises (not a single-family dwelling) with paid or volunteer staff that provides full-time care to more than 6 individuals. Residential care facilities include dependent and/or independent living facilities, group homes (N.C.G.S. 131D), residential child-care facilities (N.C.G.S. 131D-10.2), assisted living residences (N.C.G.S. 131D-2), adult care homes (N.C.G.S. 131D2), retirement housing, congregate living services, assisted living services, continuing care retirement centers, skilled nursing services, and orphanages. This term excludes family care homes and nursing homes."

As described above Southeastern does not "provide full-time care" in its home.

Furthermore, the Residential Care Facility definition expressly excludes single family dwellings, and does not include the handicapped.

The KDO defines Family as "An individual; or two or more persons related by blood, marriage, or law; or a group of not more than any five persons living together in a dwelling unit. Employees that provide basic household services to and

share common housekeeping facilities with any family consisting of an individual or two or persons related by blood, marriage, or law, are a part of the family.”

The definition of family would apply to Southeastern if the limitation on unrelated people is increased or lifted.

It is also noteworthy that the KDO allows Family Care Homes (which are for the disabled) as a matter of right in residential districts.

And of course the KDO allows both Residential Care Facilities (which the City has classified Southeastern) and Cooperative Houses (which can also be homes for persons in recovery), each with a Special Use Permit, in the same residential districts where Southeastern is located.

Finally, a women’s recovery home is located at 1102 Lane St., Kannapolis.

NECESSARY:

Living in a supportive and sober house is therapeutically beneficial to persons in early recovery from alcoholism or drug addiction. Safe sober living environments are salient to successful recovery and staying clean and sober. The quality of the relationship among the residents in the Southeastern house is one of mutual support and bonding, providing an ameliorative therapeutic benefit which aids each resident in their recovery from alcoholism or drug addiction. As a result

of this therapeutic benefit, those living in a sober group setting are more likely to remain clean and sober than those living on their own.²

Additionally, the requested accommodation provides the residents an equal opportunity to use and enjoy housing of their choice.³

REVIEW STANDARDS FOR SPECIAL USE PERMIT

1. The proposed special use will be in harmony with the area in which it is to be located and in general conformance with the City's Comprehensive Plan.

The proposed use will be in harmony as evidenced by the City's KDO itself which allows Residential Care Facilities in the area with a Special Use Permit, allows Cooperative Houses in the area by Special Use Permit, allows Family Care Homes as a matter of right in the area, and allows Families of unlimited number of

² *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1227 (11th Cir. 2008) citing a series of federal decisions addressing the efficacy of group living arrangements for recovering substance abusers.

³ The law requires equal opportunity for disabled persons to use and enjoy housing of their choice. *United States v. City of Jackson*, 318 F.Supp.2d 395, 416 (S.D. Miss. 2002) (FHA "guarantee[s] that the disabled be afforded equal opportunity to live, not in some residence in the community, but rather in the residence of their choice"); *ARC of New Jersey, Inc. v. State of New Jersey*, 950 F. Supp. 637, 645 (D. N.J. 1996) ("ceiling quotas imposed via group home spacing rules improperly limit the ability of handicapped persons 'to live in the residence of their choice in the community,' even if imposed in the name of integration or 'declustering'"); *Oxford House, Inc. v. Town of Babylon*, 819 F. Supp. 1179, 1185 n.10 (E.D. N.Y. 1993) (FHA "dictates that a handicapped individual must be allowed to enjoy a particular dwelling, not just some dwelling somewhere in the town"); *Oxford House-Evergreen v. City of Plainfield*, 769 F. Supp. 1329, 1344 (D. N.J. 1991) (defense based on existence of alternative locations in the city for group home held "without merit").

related persons as a matter of right in the area, and a women's recovery home is located at 1102 Lane St., Kannapolis.

2. Adequate measures shall be taken to provide ingress and egress to minimize traffic hazards and traffic congestion on the public roads.

The proposed use will not affect traffic at all. As explained above, Southeastern does not allow its residents to have cars on-site, nor are visitors allowed.

3. The proposed use shall not be noxious or offensive by reason of vibration, noise, odor, dust, smoke or gas.

This is not applicable. The proposed use produces none of the above.

4. The establishment of the proposed use shall not impede the orderly development and improvement of surrounding property for uses permitted within the zoning district.

This too is not applicable. The use will not impede development or improvement of surrounding property, and there is not evidence to the contrary.

5. The establishment, maintenance, or operation of the proposed use will no be detrimental to or endanger the public, health, safety, or general welfare.

The is no evidence of any danger, and the fact that the home has operated since last year without out incident is further proof that the home is not a public danger.

6. The proposed use complies with all applicable provisions of the KDO.

The proposed use complies with the applicable provisions of the KDO because the KDO allows Residential Care Facilities in the area with a Special Use Permit, and further nothing about the proposed use does not comply with the applicable provisions of the KDO.

7. The applicant consents in writing to all conditions of approval included in the approved special use permit.

The applicant's response to this is premature pending any conditions of approval.



January 17, 2024

Sent Via US Mail and E-Mail

Gregory Alan Heafner
Gregory Alan Heafner, PA
1510 Twisted Oak Drive
Chapel Hill, North Carolina 27516
gsheafner@bellsouth.net

Re: Response to Request for Reasonable Accommodation under Federal Fair Housing Act (“FHA”) for Southeastern Recovery Homes, LLC (“Southeastern”) at 3148 Barr Road, Concord, NC 28027 (the “Property”)

Dear Mr. Heafner:

Please accept this letter in response to your letter dated December 13, 2023, and subsequent emails, regarding a request for a reasonable accommodation under the FHA as it relates to your client’s occupation of the Property. More specifically, you request that the City of Kannapolis (“City”) “grant a reasonable accommodation to treat the Southeastern use as the functional equivalent of a family for all applicable codes, and grant a waiver on the limitation of the number of unrelated persons who can reside together as a family.”

As previously communicated, the Property is located in the Planning and Zoning jurisdiction of the City. The City classifies Southeastern’s use of the Property as a Residential Care Facility under the Kannapolis Development Ordinance (“KDO”). The KDO defines a Residential Care Facility as:

“A staffed premises (not a single-family dwelling) with paid or volunteer staff that provides full-time care to more than 6 individuals. Residential care facilities include dependent and/or independent living facilities, group homes (N.C.G.S 131D), residential child-care facilities (N.C.G.S 131D-10.2), assisted living residences (N.C.G.S. 131D-2), adult care homes (N.C.G.S. 131D2), retirement housing, congregate living services, assisted living services, continuing care retirement centers, skilled nursing services, and orphanages. This term excludes family care homes and nursing homes.”

Pursuant to the KDO, a Residential Care Facility requires a special use permit issued by the Board of Adjustment. As of the writing of this letter, Southeastern has not applied for a special use permit but has instead requested a reasonable accommodation from City staff. It is essential to clarify that City staff lacks the authority to circumvent the Board of Adjustment’s jurisdiction



and grant this type of accommodation. The authority to issue special use permits rests solely with the Board of Adjustment.

Furthermore, the FHA does not allow Southeastern to be exempt from applying for a conditional use permit. *See Oxford House, Inc. v. City of Virginia Beach*, 825 F.Supp. 1251 (E.D.Va. 1993); *see also Oxford House-C v. City of St. Louis*, 77 F.3d 249 (8th Cir. 1996) (stating “Congress did not intend for [the FHA] to remove handicapped people from the normal and usual incident of citizenship, such as participation in the public components of zoning decisions, to the extent that participation is required of all citizens whether or not they are handicapped. In our view, Congress all did not intend the federal courts to act as zoning boards by deciding fact-intensive accommodation issues in the first instance.”) (internal citations omitted). In *City of Virginia Beach*, the court was asked to scrutinize a Virginia Beach zoning ordinance that required group homes to obtain special use permits like those required in the KDO. Oxford, the operators of a group home (like Southeastern, a home for recovering former alcohol and drug abusers), refused to apply for a special use permit. Oxford then sued Virginia Beach alleging, amongst other things, that Virginia Beach requiring that they apply for a special use permit constitutes a failure to make a reasonable accommodation in violation of the FHA. In dismissing Oxfords complaint in this regard, the court stated:

“In this regard, the court observes that, by defining discrimination under the [FHA] to include the ‘refusal to make reasonable accommodations in rules, policies, [and] practices,’ Congress obviously contemplated providing cities, among others, the opportunity to adjust their generally applicable rules to allow handicapped individuals equal access to housing. *See* 42 U.S.C. § 3604(f)(3)(B). The zoning process, including the hearings on applications for conditional use permits, serves that purpose. Indeed, were it otherwise, federal courts increasingly would become entangled prematurely in disputes regarding application of neutral zoning ordinances to the handicapped. Federal courts would thus become not zoning boards of appeals, but zoning boards of first instance, a result Congress surely did not intend.”

Id. at 1261 (citations omitted).

In line with this legal precedent, like all prospective operators of a Residential Care Facility, Southeastern must follow the prescribed procedure and apply for a special use permit as



outline in the KDO. The “reasonable accommodation” sought by Southeastern cannot be granted by City staff.

Since your client has occupied the Property without acquiring a special use permit, it is necessary for the City to require submission of an application for the permit immediately. Please submit the enclosed Special Use Permit application on or before January 26, 2024. In the event you fail to do so, it will be deemed as your continued refusal to comply with the requirements of the Kannapolis Development Ordinance. Should you have any questions or concerns about the application process for a special use permit, City staff are available to guide you through that process.

Sincerely,

Walter M. Safrit, II
City Attorney

WMS/jel

Encl: Special Use Permit

Cc: Richard Smith, City of Kannapolis Planning Director
Tony Cline, City of Kannapolis Senior Code Enforcement Officer

GREGORY ALAN HEAFNER, PA

ATTORNEY AT LAW
1510 TWISTED OAK DRIVE
CHAPEL HILL, NORTH CAROLINA 27516
Phone (919) 967-3800

December 13, 2023

Mr. Richard Smith
Planning Director
City of Kannapolis
401 Laureate Way
Kannapolis, NC 28081

Via Email Only To: rsmith@kannapolisnc.gov

RE: *3148 Barr Road, Concord, NC 28027*

Dear Mr. Smith:

I represent Southeastern Recovery Homes, LLC (“Southeastern”). Southeastern operates a home for persons recovering from alcoholism or drug addiction at the above referenced address. This letter follows Tony Cline’s visit to the home and my subsequent conversation with Walter Safrit asking that I write you.

I understand that the City classifies Southeastern’s use of the property as a Residential Care Facility under Kannapolis’ Development Ordinance (“KDO”), which requires a special use permit. This letter shall serve as a request for a reasonable accommodation pursuant to the Federal Fair Housing, Act 42 U.S.C. 3600 et. seq. Specifically, Southeastern requests that the City of Kannapolis grant a reasonable accommodation to treat the Southeastern use as the functional equivalent of a family for all applicable codes, and grant a waiver on the limitation of the number of unrelated persons who can reside together as a family.

SOUTHEASTERN HOUSE DESCRIPTION

The property at 3148 Barr Road is a 3000 square foot, five bedroom, three bath, single family detached house. The house is home to men in recovery from alcoholism and/or drug addiction. These men receive out of house treatment for their recovery at another location. The home is simply a safe supportive place for these men to live in a clean and sober environment. The only staff in the home are two live-in supervisors to assure the safe and sober environment.

REQUEST FOR REASONABLE ACCOMMODATION

Southeastern's residents are a protected class under the Fair Housing Act (FHA), 42 U.S.C. § 3600 et. seq. Recovering alcoholics and addicts are specifically included within the definition of "handicapped individual" under the FHA. *City of Edmonds, WA v. Oxford House, Inc.* 514 U.S. 725 (1995). The FHA's prohibits discrimination against persons within a protected class. This prohibition includes discriminatory zoning decisions by local governments. The FHA defines discrimination to include a "refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such handicapped person equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(f)(3)(B).

Federal law requires a reasonable accommodation when the request is both reasonable and necessary. The law defines reasonable and necessary as follows:

"Reasonable". An accommodation is reasonable if it would not undermine the legitimate purposes of or fundamentally alter existing zoning regulations, and if it would not impose a significant financial and administrative burden upon the municipality.

"Necessary". An accommodation is necessary if it would provide direct or meaningful therapeutic amelioration of the effects of the particular disability or handicap, and would afford handicapped or disabled persons equal opportunity to enjoy and use housing of their choice in residential districts of the municipality.

The reasonableness and necessity of the requested accommodation for Southeastern's use of 3148 Barr Road is as follows:

REQUEST IS REASONABLE

Southeastern's use does not undermine the purposes of the KDO, nor does it impose any financial or administrative burden on the City. In fact, the Southeastern house provides a free benefit to the City by providing housing to men recovering from alcoholism and drug addiction.

Further, the Southeastern house does not fundamentally alter the City's zoning scheme. The KDO does not contain a definition of use that specifically addresses the Southeastern use.

The KDO definition of Residential Care Facility is, "A staffed premises (not a single-family dwelling) with paid or volunteer staff that provides full-time care to more than 6 individuals. Residential care facilities include dependent and/or independent living facilities, group homes (N.C.G.S. 131D), residential child-care facilities (N.C.G.S. 131D-10.2), assisted living residences (N.C.G.S. 131D-2), adult care homes (N.C.G.S. 131D2), retirement housing, congregate living services, assisted living services, continuing care retirement centers, skilled nursing services, and orphanages. This term excludes family care homes and nursing homes." This definition expressly excludes single family dwellings and does not include the handicapped.

However, the KDO defines Family as “An individual; or two or more persons related by blood, marriage, or law; or a group of not more than any five persons living together in a dwelling unit. Employees that provide basic household services to and share common housekeeping facilities with any family consisting of an individual or two or persons related by blood, marriage, or law, are a part of the family.” This definition encompasses the Southeastern use if the limitation on unrelated people is increased or lifted. It is also noteworthy that the KDO allows Family Care Homes (which are for the disabled) as a matter of right in residential districts.

REQUEST IS NECESSARY

Living in a supportive and sober house is therapeutically beneficial to persons in early recovery from alcoholism or drug addiction. In fact, such safe sober living environments are salient to successful recovery and staying clean and sober. The quality of the relationship among the residents in the Southeastern house is one of mutual support and bonding, providing an ameliorative therapeutic benefit which aids each resident in their recovery from alcoholism or drug addiction. As a result of this therapeutic benefit, those living in a sober group setting are more likely to remain clean and sober than those living on their own.¹

Additionally, the requested accommodation provides the residents an equal opportunity to use and enjoy housing of their choice.²

Based on the foregoing, Southeastern requests a reasonable accommodation pursuant to the Fair Housing Act for the City to treat the Southeastern use as the functional equivalent of a family for all applicable codes and waive the limitation of the number of unrelated persons who can reside together as a family. Southeastern appreciates the City’s consideration and I look forward to the City’s response to this request. Should you have any questions in the interim, please do not hesitate to contact me.

¹ *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1227 (11th Cir. 2008) citing a series of federal decisions addressing the efficacy of group living arrangements for recovering substance abusers.

² The law requires equal opportunity for disabled persons to use and enjoy housing of their choice. *United States v. City of Jackson*, 318 F.Supp.2d 395, 416 (S.D. Miss. 2002) (FHA “guarantee[s] that the disabled be afforded equal opportunity to live, not in some residence in the community, but rather in the residence of their choice”); *ARC of New Jersey, Inc. v. State of New Jersey*, 950 F. Supp. 637, 645 (D. N.J. 1996) (“ceiling quotas imposed via group home spacing rules improperly limit the ability of handicapped persons ‘to live in the residence of their choice in the community,’ even if imposed in the name of integration or ‘declustering’”); *Oxford House, Inc. v. Town of Babylon*, 819 F. Supp. 1179, 1185 n.10 (E.D. N.Y. 1993) (FHA “dictates that a handicapped individual must be allowed to enjoy a particular dwelling, not just some dwelling somewhere in the town”); *Oxford House-Evergreen v. City of Plainfield*, 769 F. Supp. 1329, 1344 (D. N.J. 1991) (defense based on existence of alternative locations in the city for group home held “without merit”).

Sincerely,

Greg Heafner

cc: Jamie Hoffman, Southeastern
Walter Safrit, City Attorney

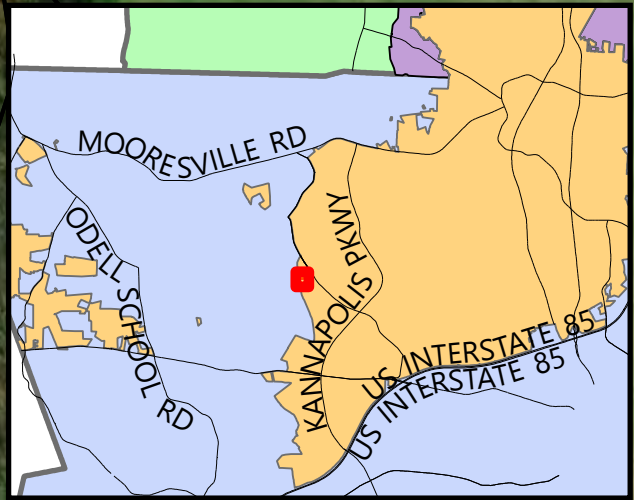


Vicinity Map

Case Number: BOA-2024-06

Applicant: Southeastern Recovery Homes LLC

3148 Barr Rd



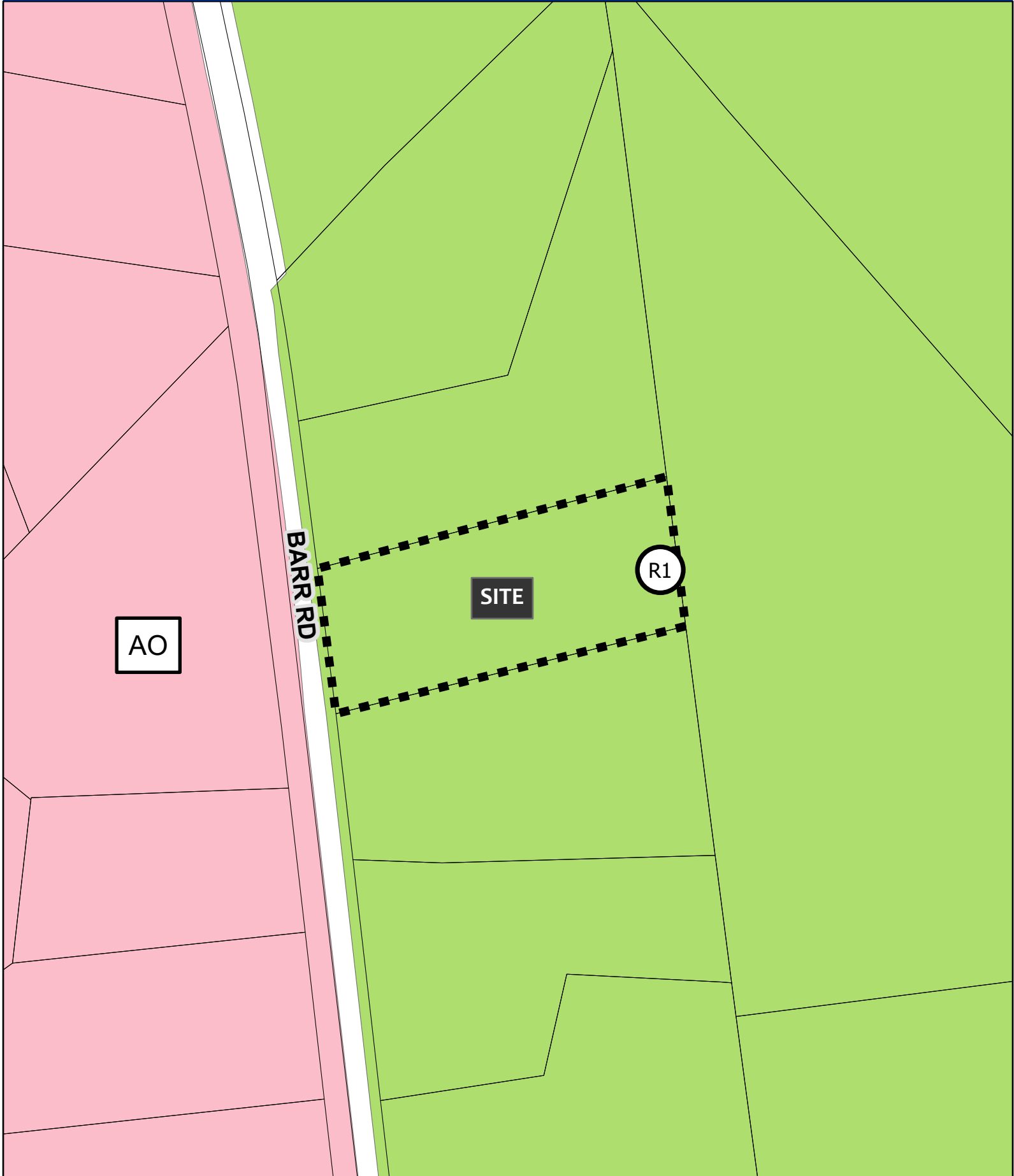


Kannapolis Current Zoning

Case Number: BOA-2024-06

Applicant: Southeastern Recovery Homes LLC

3148 Barr Rd



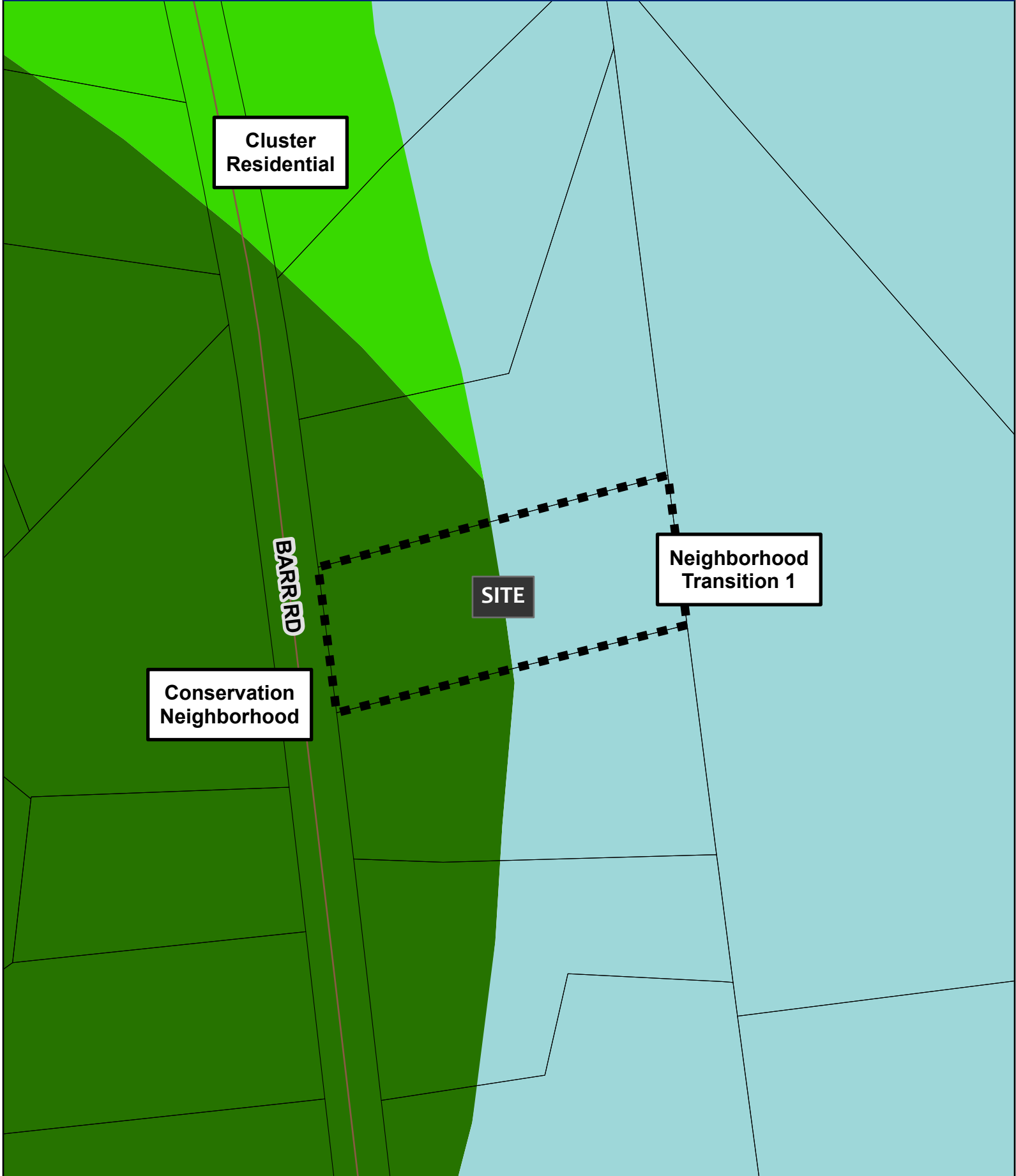


Kannapolis 2030 Future Land Use Map

Case Number: BOA-2024-06

Applicant: Southeastern Recovery Homes LLC

3148 Barr Rd



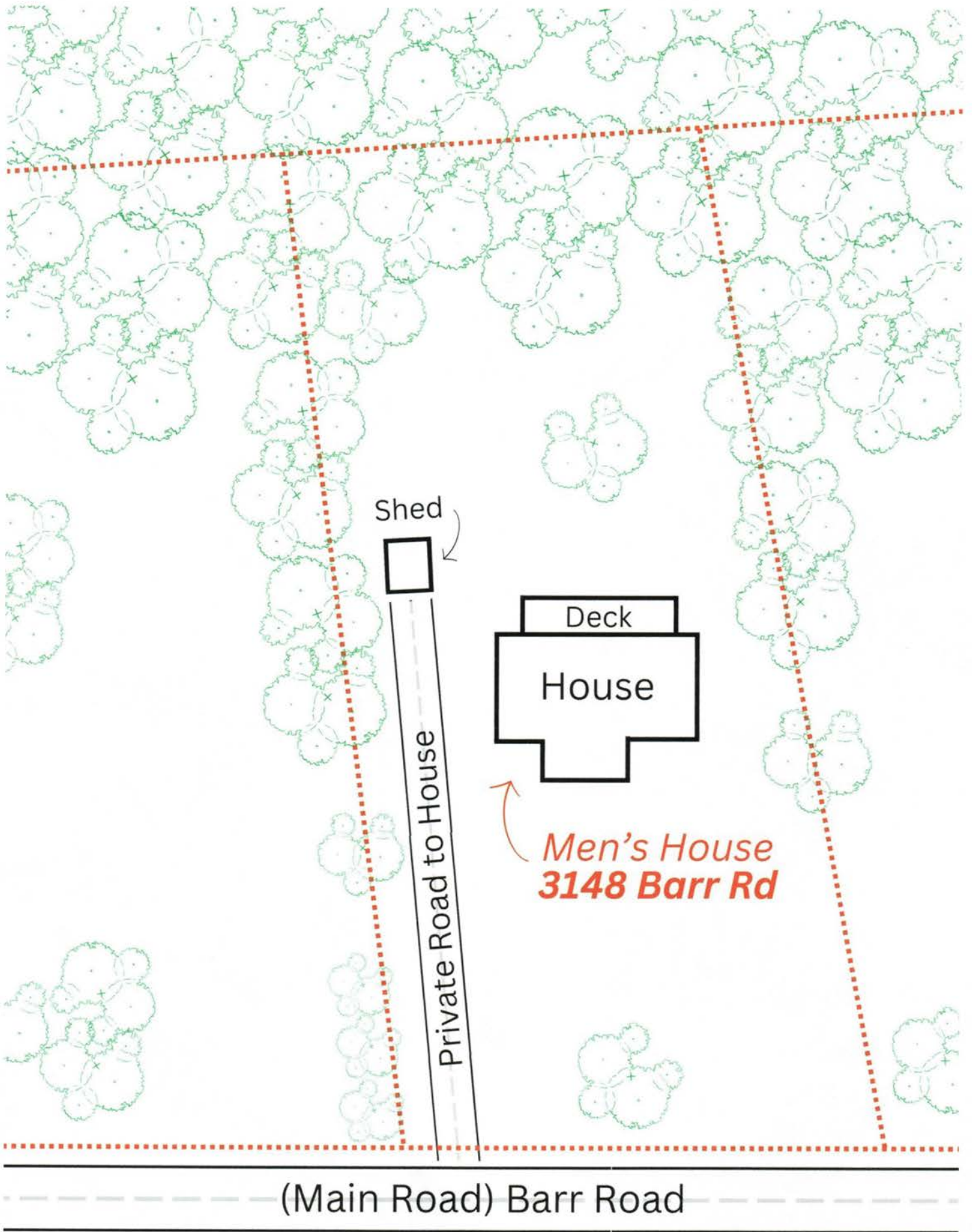
**Cluster
Residential**

BARR RD

**Conservation
Neighborhood**

SITE

**Neighborhood
Transition 1**



(Main Road) Barr Road



AcctName1	MailAddr1	MailCity	MailState	MailZipCod
ERIC & JOELY POWLAS	3250 BARR ROAD	CONCORD	NC	28027
CAMERON & ROBIN SLOOP	3119 BARR RD	CONCORD	NC	28027
BENJAMIN & LAUREN BURGESS	3200 BARR RD	KANNAPOLIS	NC	28027
FRANCISCO & JUANA VARELA	3124 BARR RD	CONCORD	NC	28027
NATHAN & ERIN SAUNDERS	3211 TRINITY CHURCH RD	CONCORD	NC	28027
MARK & ERIN MARCO	901 MILLER ST	KANNAPOLIS	NC	28081
MICHAEL & BRENDA BENTON	3121 BARR ROAD	CONCORD	NC	28027
KIMBERLY JO GORDON & LESLIE MCCREADY	3029 BARR RD	CONCORD	NC	28027
H2-1 CAPITAL LLC	46 ORVIS STONE CIR	BILTMORE LAKE	NC	28715
H2-1 LLC				
ATTN: JAMIE HOFFMAN	3148 BARR RD	CONCORD	NC	28027
GREG HEAFNER	1510 TWISTED OAK DR	CHAPEL HILL	NC	27516



March 19, 2024

Dear Property Owner,

Please be advised that the City of Kannapolis Board of Adjustment will conduct a quasi-judicial public hearing on Tuesday April 2, 2024, at 6:00 PM at City Hall, located at 401 Laureate Way, for the following case:

BOA-2024-06 – Special Use Permit – 3148 Barr Road

The purpose of this Public Hearing is to consider a request for a Special Use Permit (SUP) to allow for a Residential care facility on property located at 3148 Barr Road. Pursuant to Table 4.2.B(5) of the Kannapolis Development Ordinance, a SUP is required for a Residential care facility in the Residential 1 (R1) zoning district. The subject property is 1.41 +/- acres and is more specifically identified as Cabarrus County Parcel Identification Number 46927680540000 (**Please see attached vicinity map showing the location of this property.**)

As an abutting property owner, you are being notified of this public hearing in accordance with the requirements of the Kannapolis Development Ordinance. You are welcome to attend the public hearing and present testimony to the Board of Adjustment if you so desire.

If you have any questions about the public hearing or request, please do not hesitate to contact the Planning Department at 704.920.4355 or bbarcroft@kannapolisnc.gov.

Sincerely,

Ben Barcroft
Senior Planner

Enclosure

The meeting is accessible to people with disabilities. To request special accommodation in advance, contact the City's ADA Coordinator at 704-920.4302.

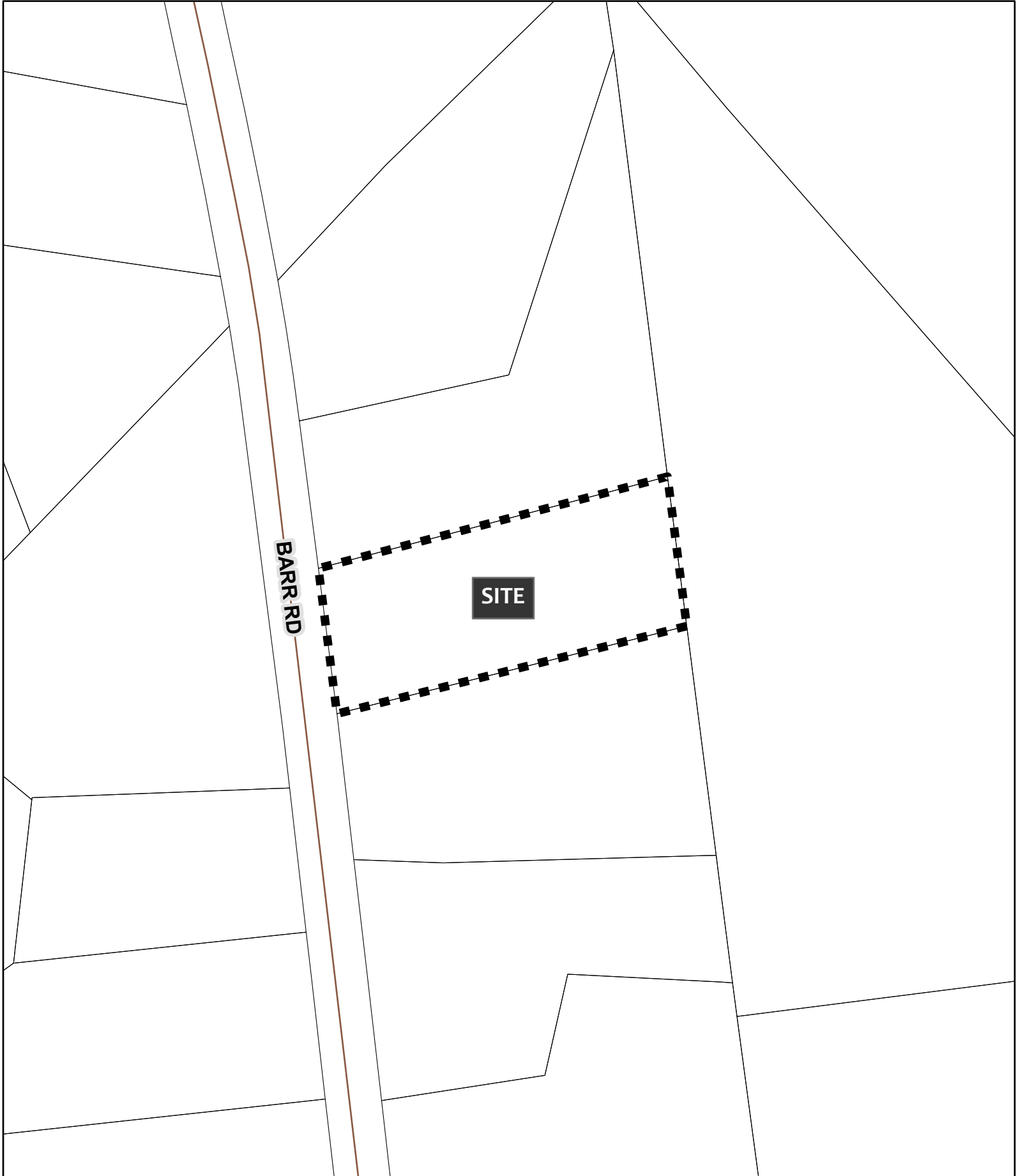


Special Use Permit

Case Number: BOA-2024-06

Applicant: Southeastern Recovery Homes LLC

3148 Barr Rd



KANNAPLIS
BOARD OF
ADJUSTMENT
PUBLIC HEARING
INFORMATION
CALL 704-920-4350
CASE # BOA-2024-06